* UMASS/AMHERST *
312066 0362 9088 8

Digitized by the Internet Archive
in 2012 with funding from
Boston Library Consortium Member Libraries

http://archive.org/details/massachusettslem1987mass

MASS. CAI.2: M38/987

MASSACHUSETTS
LEMON LAW ARBITRATION PROGRAM

1987 REPORT

GOVERNMENT DOCUMENTS
SEP 7 1988
University of Massachusetts
Depository Copy

EXECUTIVE OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

APRIL 1988

Michael S. Dukakis
GOVERNOR

Paula W. Gold
SECRETARY

1 Ashburton Place
Boston, Massachusetts 02108

Commonwealth of Massachusetts
Executive Office of Consumer Affairs
and Business Regulation
One Ashburton Place
Boston, Massachusetts 02108

617 / 727-7755

MICHAEL S. DUKAKIS
GOVERNOR

PAULA W. GOLD
SECRETARY

ACKNOWLEDGMENT

I would like to acknowledge the Lemon Law Arbitration Program staff for preparing this report and ensuring the smooth operation of the Lemon Law Arbitration Program: JoAnne Aylward, Executive Director; Mary Moynihan, Administrator; Maria Ceraulo, Senior Staff Specialist and Craig Arnold, Staff Specialist. Also, special thanks to Consumer Education Director Edgar Dworsky, Counsel Paul Gromer, former Assistant Secretary Sarah Wald, Fiscal Director Stephen Blanchard, Patricia Grifoni, Michael Gray, Mark Gillis, Mary Alice Welsh, Liz Manning and Paul Kelley.

Paula W. Gold, Secretary

The agencies within the Secretariat:

DIVISION OF BANKS
DIVISION OF STANDARDS
DIVISION OF INSURANCE
DIVISION OF REGISTRATION
ALCOHOLIC BEVERAGES CONTROL COMMISSION
COMMUNITY ANTENNA TELEVISION COMMISSION
STATE RACING COMMISSION
DEPARTMENT OF PUBLIC UTILITIES

TABLE OF CONTENTS

Page

Acknowledgment.....i

Table of Contents.....ii

List of Charts and Graphs
List of Appendices.....iii

I. Introduction.....1

II. Background.....3

III. New Developments/Significant Trends.....4

A. Cases Withdrawn After Acceptance.....4

B. Decisions Appealed by Manufacturers.....5

C. Increased Award Compliance/Manufacturer Fines.....6

IV. Statistics.....8

V. Operation of the Program.....12

A. Arbitration Contract.....12

B. Consumer Education.....13

VI. Other Activity.....13

A. Advisory Opinions.....13

B. Consumer Survey.....14

C. Revising Regulations.....15

VII. Conclusion.....15

LIST OF CHARTS AND GRAPHS

Page

Lemon Law Arbitration Requests Received.....2

1987 Highest Settlement Rates.....5

1987 Manufacturer Fines Paid.....7

Comparison of Six Largest Manufacturers' Market Share in Massachusetts and Share of Cases.....10

1987 Lemon Index.....11

LIST OF APPENDICES

Page

Appendix A 1987 Cases Received by Manufacturer.....17

Appendix B Summary of the Statute.....18

Appendix C Lemon Law Case Disposition.....21

Appendix D Arbitration Caseload vs. Market Share.....22

Appendix E Advisory Opinion #8.....24

Appendix F Advisory Opinion #9.....26

1987 REPORT

MASSACHUSETTS LEMON LAW ARBITRATION PROGRAM

I. INTRODUCTION/1987 SUMMARY

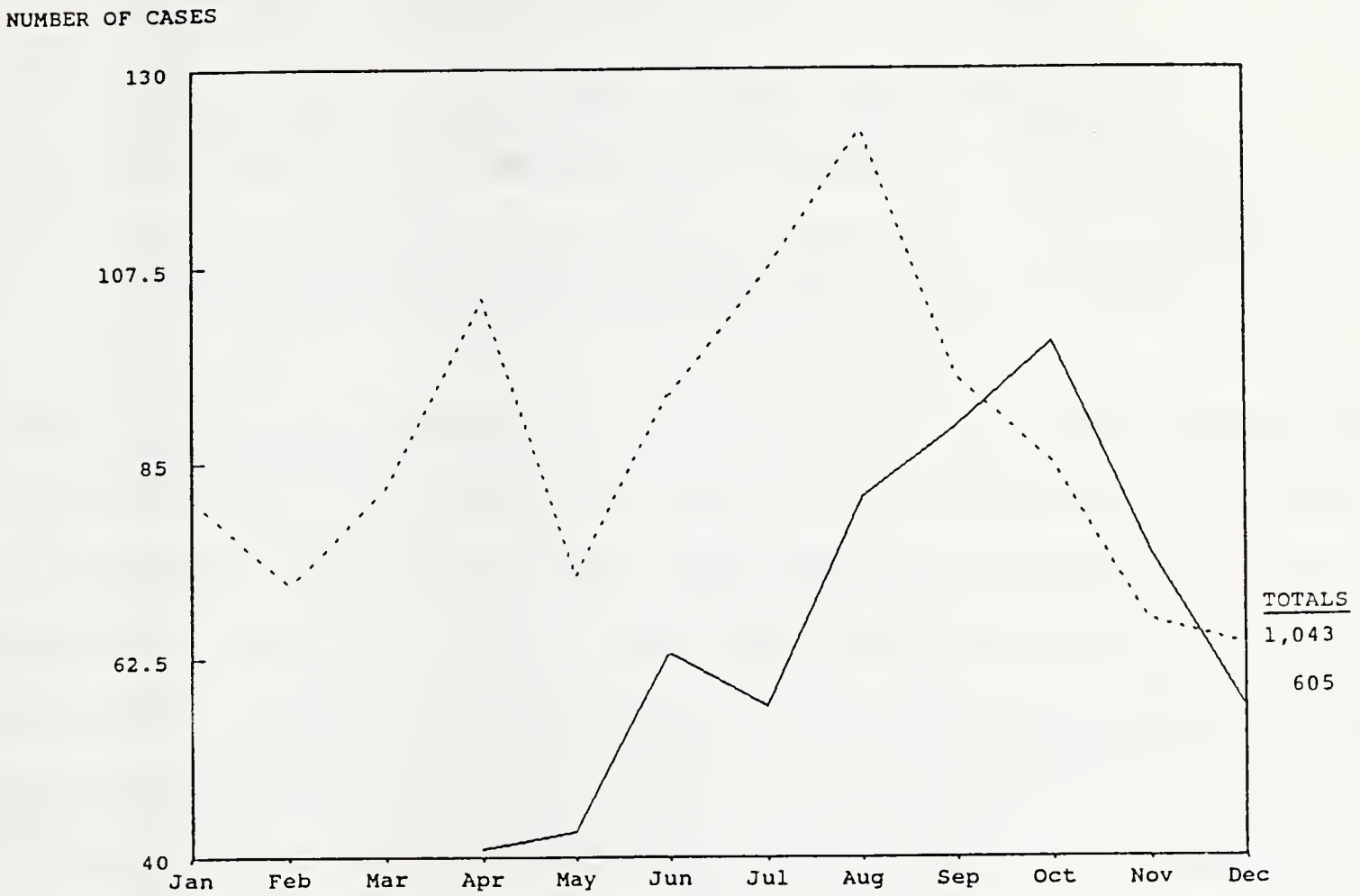
In 1986, Massachusetts became one of the first states to provide its consumers with state-run arbitration of Lemon Law disputes.

The benefits of the state-run arbitration program administered by the Executive Office of Consumer Affairs and Business Regulation (EOCABR) under Secretary Paula W. Gold have been significant for Massachusetts consumers. Arbitrators have decided in favor of consumers in nearly 2/3 of the cases heard through December 31, 1987. Consumers have received over $3.2 million in refunds and replacements since the program began--$1.9 million in 1987 alone.

The 1987 statistics show an increase in the volume of requests filed by consumers and dramatic shifts in the behavior of manufacturers. The Lemon Law Arbitration Program (LLAP) received 1043 requests for arbitration in 1987. (See Appendix A for a breakdown by manufacturer.) The volume of requests increased 15 percent from an average of 75.6 per month in 1986 to 86.9 per month in 1987. (See graph at the top of page 2.) In 1987, the percentage of cases settled prior to arbitration more than doubled from 22 percent to 46 percent. The LLAP accepted 786 cases and 387 cases were heard, with 246 decided for consumers.

In 1987, Secretary Paula W. Gold began to fine manufacturers for issuing late awards to consumers. The rate of late awards dropped from 12 percent in 1986 to only 2 percent in 1987.

LEMON LAW ARBITRATION REQUESTS RECEIVED 1986 AND 1987



On the whole, consumers are very satisfied with Lemon Law arbitration as evidenced by their letters to our office and our survey of consumers accepted for arbitration in 1986 (see page 14). The most common complaint concerns the paperwork involved:

> "I am pleased with the way things finally turned out. . . Thank God there is a Lemon Law--you were a lifesaver."
>
> "It gives me great confidence in the 'system' that an innovative consumer protection law can and does work for the people of this state. . . I believe strongly that without the Lemon Law behind me no settlement would have been offered, and I would be just another frustrated consumer."
>
> "Even though I lost the case, I still appreciate your help. It's good to know there is a way for the consumer to be heard."

> "The arbitration hearing was impressive in the tone of fairness and balance that the arbitrator maintained. While as a consumer I felt completely assisted and supported, as the operator of a small business, I appreciate the impartiality and the objectivity of the process."
>
> "The process is extremely complicated and is probably not in the grasp of the general public. More educational pamphlets are needed."
>
> "It was at times a frustrating experience to follow the steps necessary to conform to the law, but the end result was worth it."

The arbitration program has become a model for other states that have implemented or are considering state-run Lemon Law arbitration. States including Ohio, Washington, New York, New Jersey, Pennsylvania, Florida, Indiana, and Hawaii have used the Massachusetts system as part of their evaluation and development of similar legislation.

In this report, we will review the operation of the program during the past year and compare this with the program's 1986 performance.

II. BACKGROUND

The Massachusetts Lemon Law, M.G.L. c.90, s.7N1/2, sets forth standards for refund or replacement of seriously defective new motor vehicles, and provides for a free state-run arbitration program for consumers. The law originally went into effect in January 1984 and contained voluntary provisions for manufacturer arbitration of Lemon Law claims. When no manufacturers participated in the voluntary program, the law was amended in 1985 to provide for a mandatory,

state-run arbitration program which began operation April 23, 1986. (See Appendix B for a summary of the statute.)

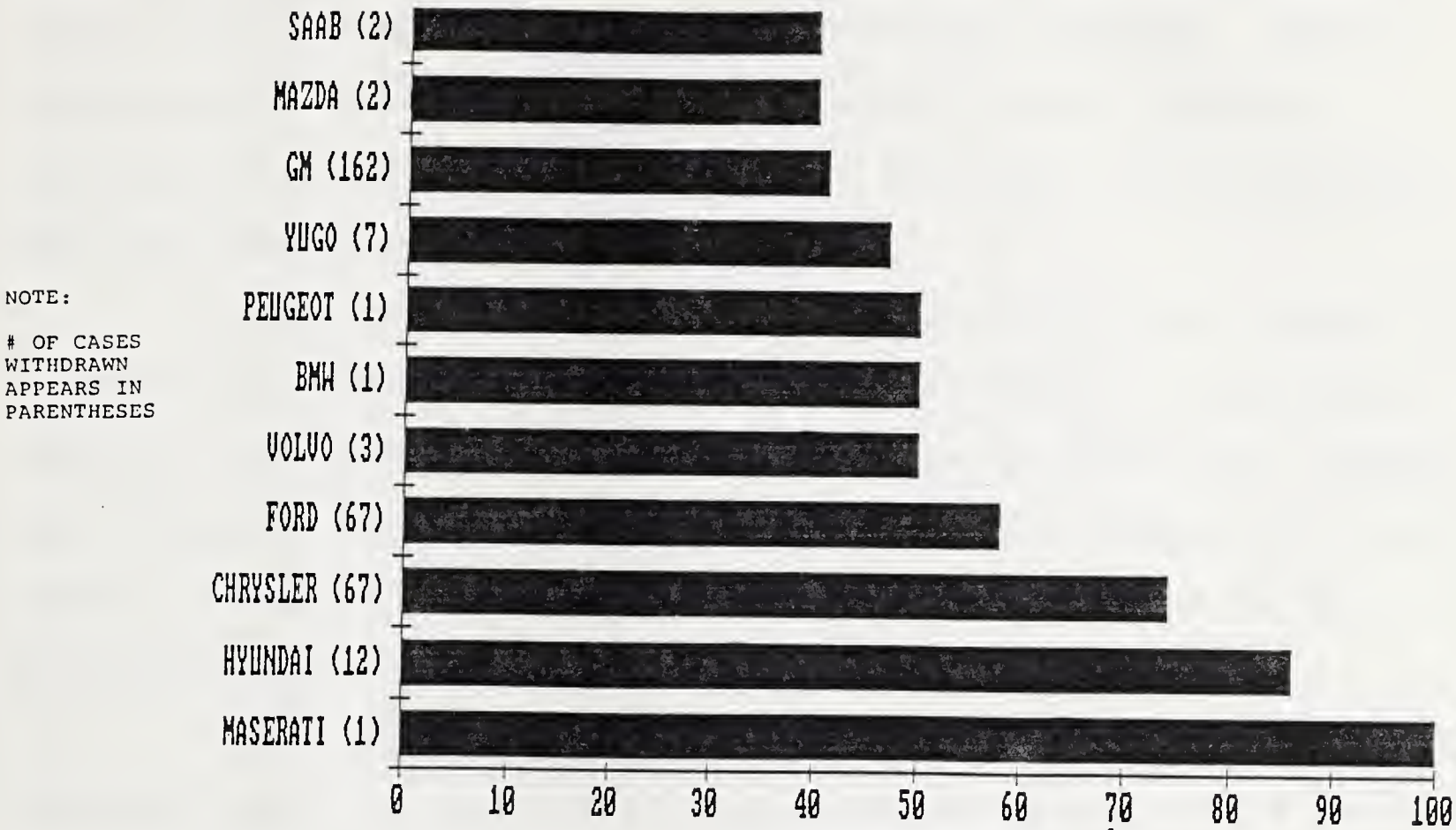
III. NEW DEVELOPMENTS/SIGNIFICANT TRENDS

Several developments during 1987 signaled a marked increase in manufacturers' efforts to operate in the spirit of the Lemon Law by resolving disputes before they reach arbitration.

A. CASES WITHDRAWN AFTER ACCEPTANCE

The number of cases withdrawn after acceptance more than doubled from 1986 to 1987. Forty-six percent of cases accepted for arbitration in 1987 were withdrawn prior to hearing compared with 22 percent in 1986. Generally, consumers withdraw after acceptance as the result of a settlement with the manufacturer. Eleven manufacturers settled more than 35 percent of their cases accepted for arbitration--Maserati, Hyundai, Chrysler, Ford, BMW, Peugeot, Volvo, Yugo, General Motors, Mazda, and Saab. (See graph at the top of page 5.) Of manufacturers who also had cases filed in 1986, Hyundai and Chrysler are the two whose 1987 withdrawal rate dramatically improved from that in 1986. In 1986, no cases were withdrawn for either of these manufacturers, while in 1987 Hyundai had an 86 percent withdrawal rate and Chrysler had a 74 percent withdrawal rate. General Motors and AMC/Jeep/Renault had the lowest withdrawal rates of manufacturers with more than a five percent share of accepted cases with 41 percent and 37 percent, respectively. (For information on all manufacturers' withdrawal rates, see Lemon Law Case Disposition Appendix C.)

1987 HIGHEST SETTLEMENT RATES
(CASES WITHDRAWN AFTER ACCEPTANCE)



NOTE:

OF CASES WITHDRAWN APPEARS IN PARENTHESES

B. DECISIONS APPEALED BY MANUFACTURERS

In addition to the high withdrawal rate in 1987, the percentage of cases decided in favor of consumers and subsequently appealed by manufacturers dropped sharply from 14 percent in 1986 to 4 percent in 1987. Overall, manufacturers have appealed 8 percent of cases decided for consumers during the program's two years.

Ford Motor Company, which accounted for 80 percent of all cases appealed in 1986, has significantly reduced its rate of appeals. In 1987, Ford accounted for only 18 percent of appeals. Ford appealed 40 percent of its cases decided in favor of consumers in 1986, compared to 7 percent in 1987.

The statute contains many disincentives for appealing a decision. When filing an appeal, manufacturers must post a bond equal to the amount of the arbitrator's award plus an additional $2,500 for anticipated attorneys' fees for the consumer. Should a judge rule in favor of a consumer and further find that the manufacturer's appeal was frivolous, he can order the manufacturer to pay the consumer double damages.

In two manufacturer appeals, the Superior Court upheld the arbitrator's decision and ordered the manufacturer to pay double damages to the consumer. In one of these cases, Ford Motor Company was ordered to pay $33,000 to the consumers. The other case involved General Motors, and has been appealed by General Motors to the Supreme Judicial Court.

There are two other lemon law cases pending at the Supreme Judicial Court. In one, Ford is appealing a Superior Court decision upholding the arbitrator's order. In the other, Ford is appealing a Superior Court award of double damages to the consumer because of Ford's failure to pay an arbitration award on time.

C. INCREASED AWARD COMPLIANCE/MANUFACTURER FINES

The third area of significant improvement lies in manufacturer compliance with award deadlines. According to information supplied to the LLAP by consumers, two percent of awards were issued late in 1987, compared with 12.5 percent in 1986.

Increased award compliance can be linked to the levying of several fines against manufacturers for issuing late awards.

The statute requires manufacturers either to issue an award to a consumer or file an appeal within 21 days of the mailing of a decision in favor of a consumer. Manufacturers who fail to issue awards or issue awards late can be fined $5,000 per day, up to a maximum of $50,000, for each day an award is late. Manufacturers issuing late awards in 1986 were put on notice of the law's fine provisions by the EOCABR, and Secretary Gold notified manufacturers in February of 1987 that she would begin levying fines for late awards after February 20, 1987. Through December 31, 1987, seven manufacturers were fined for late awards. Five of these manufacturers have paid fines totaling $53,000. (See Chart below.) Money paid for fines goes to the Commonwealth's General Fund, not to the consumer or the EOCABR. Two manufacturers, Mitsubishi and TVR have not paid their late award fines. Both cases have been referred to the Attorney General.

1987 MANUFACTURER FINES PAID

Audi	$20,000
AMC/Jeep/Renault	7,500
Ford	7,500
Subaru	5,000
Yugo	13,000

IV. 1987 STATISTICS

From January through December 31, 1987, the LLAP received 1043 requests for arbitration. Of those requests, 115 (11 percent) were denied acceptance into the program. The most common reason for denial was failure to meet the "reasonable number of repair attempts" provision of the statute. The office also denied requests of consumers who indicated their vehicles were used primarily for business purposes (business vehicles are not covered by the statute), who filed their request beyond the 18 month statutory deadline, and who indicated that their problem did not continue after the final repair opportunity, or was no longer a substantial impairment.

A total of 786 cases were accepted for arbitration. This includes 24 cases that were originally filed in 1986 but were not accepted until after January 1, 1987. Manufacturers with the largest percentage of accepted cases in 1987 were General Motors with 51 percent, Ford with 15 percent, Chrysler with 12 percent, and AMC/Jeep/Renault with 5 percent.

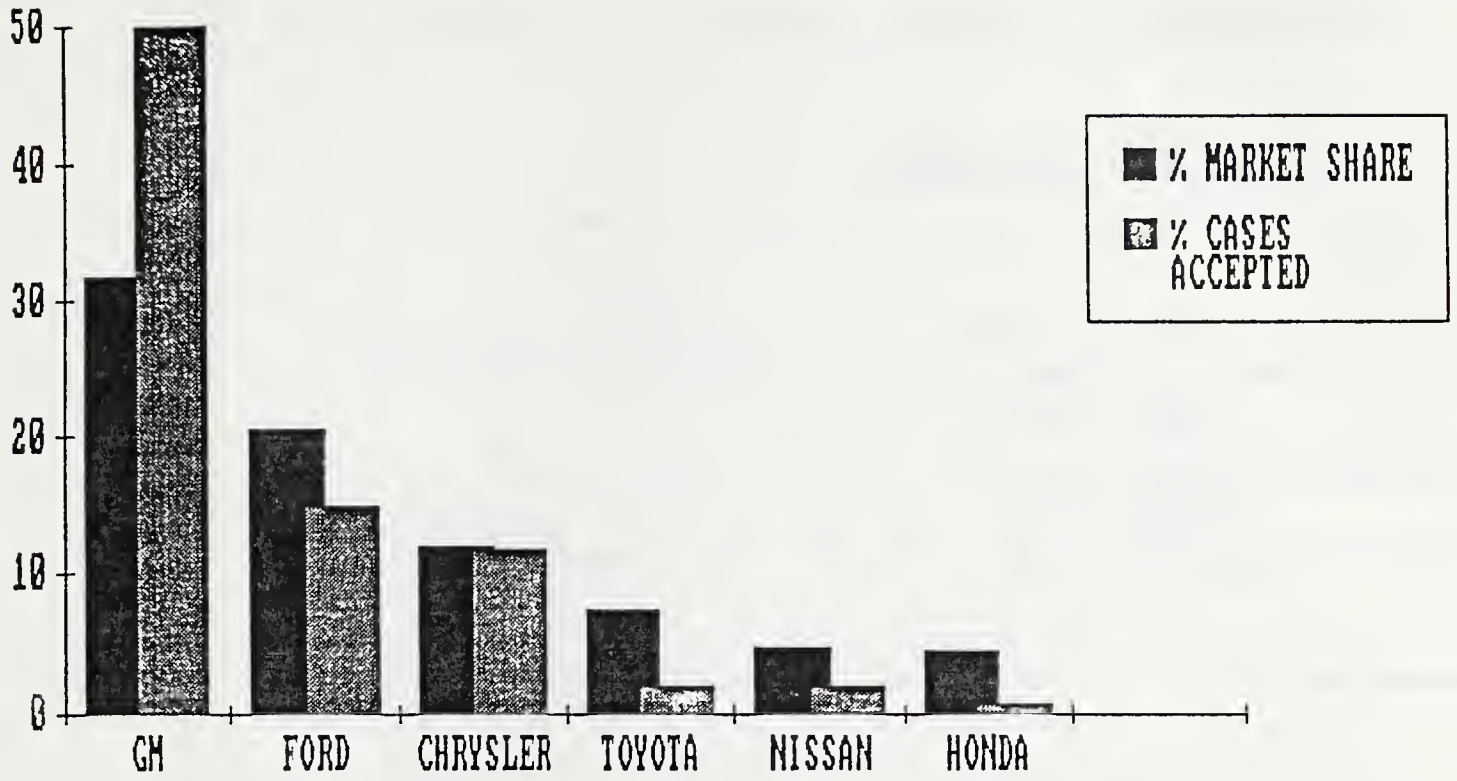
Since it is reasonable to expect that a car manufacturer with a large share of the market will have a large share of cases accepted for arbitration, the number of cases accepted for a manufacturer has to be viewed in relation to its market share. To quantify that relationship, we have developed a lemon index which indicates the extent to which the number of cases accepted for a manufacturer is more than, or less than, the number expected based on market share. For example, a manufacturer with a 20 percent market share might be expected to have 20 percent of cases accepted for arbitration.

PLEASE NOTE: The 1987 lemon index is computed differently from the 1986 lemon index. This year, it is based on a manufacturer's share of accepted arbitration cases, not its share of cases received.

The lemon index is affected by both the number of alleged "lemons" made by a manufacturer, and the manufacturer's rate of settling cases prior to reaching arbitration. A manufacturer with a lemon index of +50 percent, has 50 percent more cases accepted for arbitration than its market share might have predicted. Such a manufacturer is either making more "lemons" or not satisfying consumers at the manufacturer's final repair opportunity, or both. This year's lemon index reveals that of manufacturers that had at least 100 new vehicle registrations in 1987, Yugo accounted for approximately two percent of our caseload, though it only had 1/10 of one percent of Massachusetts' market share. Its lemon index was +1825 percent, meaning it had 19 times the number of cases one would expect based on sales volume.

Other manufacturers whose share of accepted arbitration cases exceeded their share of the market were: Alfa Romeo (14 times), Jaguar (2.5 times), AMC/Jeep/Renault (2 times), Peugeot (2 times) and General Motors (1.6 times). Honda had 89 percent fewer cases than expected, and both Sterling and Range Rover had a lemon index of -100 percent, since they had no cases accepted. (See charts at the top of page 10, on page 11, and Appendix D.)

COMPARISON OF SIX LARGEST MANUFACTURERS' MARKET SHARE IN MASSACHUSETTS
AND SHARE OF CASES ACCEPTED
1987



NOTE: MARKET SHARE FIGURES ARE FOR NEW CARS AND TRUCKS UNDER 10,000 LBS. REGISTERED IN MASSACHUSETTS 1-1-87 TO 12-31-87 ACCORDING TO R.L. POLK & COMPANY. ARBITRATION REQUESTS BASED ON 783 REQUESTS ACCEPTED IN 1987 AND INCLUDE 24 CASES RECEIVED IN 1986.

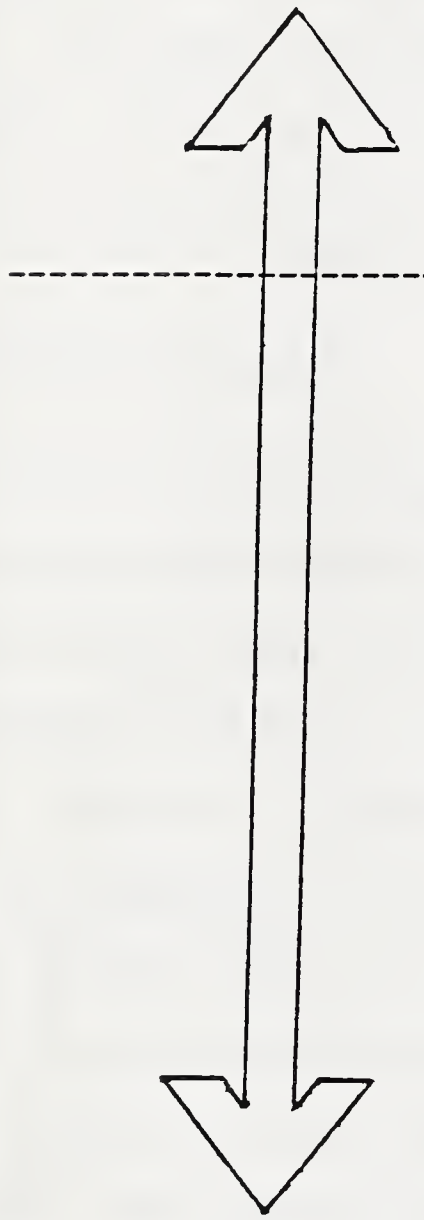
THREE MOTORCYCLE CASES WERE ACCEPTED IN 1987 BUT ARE NOT INCLUDED IN THESE STATISTICS.

Arbitrators issued decisions in 387 cases through December 31, 1987. Sixty-four percent were in favor of consumers, 36 percent were in favor of manufacturers. This compares with 1986's 66 percent rate of decisions in favor of consumers and 34 percent rate of decisions in favor of manufacturers.

As a result of arbitration hearings, consumers received over 1.9 million in refunds and replacement vehicles. The average award was between $12,000 and $13,000, with most consumers receiving a refund. In 1987, only a handful of consumers accepted replacement vehicles offered by manufacturers.

LEMON INDEX (1987)

(NUMBER OF CASES ACCEPTED COMPARED TO MARKET SHARE)



LEMON INDEX	MANUFACTURER
+1825%	YUGO
+1315%	ALFA ROMEO
+156%	JAGUAR
+109%	AMC/JEEP/RENAULT
+101%	PEUGEOT
+60%	GM (TOTAL)
0%	"AVERAGE"
-2%	CHRYSLER
-21%	SUBARU
-23%	PORSCHE
-28%	FORD
-32%	SAAB
-32%	VOLVO
-44%	MITSUBISHI
-45%	VOLKSWAGEN
-45%	HYUNDAI
-49%	AUDI
-54%	ISUZU
-56%	NISSAN
-59%	BMW
-70%	MAZDA
-72%	TOYOTA
-76%	SUZUKI
-78%	MERCEDES BENZ
-89%	HONDA
-100%	STERLING
-100%	RANGE ROVER

NOTE: LEMON INDEX INDICATES WHETHER THE NUMBER OF COMPLAINTS ACCEPTED AGAINST A MANUFACTURER IS GREATER THAN OR LESS THAN ITS MARKET SHARE OF NEW CARS AND TRUCKS. A MANUFACTURER WITH A MARKET SHARE OF 10%, BUT WITH 15% OF THE LEMON LAW CASES WOULD HAVE A LEMON INDEX OF +50%. LIKEWISE, IF THE SAME MANUFACTURER HAD ONLY 5% OF THE CASES ACCEPTED, ITS LEMON INDEX WOULD BE -50%.

THE LEMON INDEX IS AFFECTED BY THE NUMBER OF COMPLAINTS OF ALLEGEDLY DEFECTIVE VEHICLES AND/OR THE SETTLEMENT RATE OF COMPLAINTS MADE PRIOR TO ACCEPTANCE FOR ARBITRATION.

THE 1987 LEMON INDEX IS COMPUTED DIFFERENTLY FROM THE 1986 LEMON INDEX IN LAST YEAR'S REPORT, THEREFORE, THE TWO CANNOT BE COMPARED.

In 1987, the average number of days from acceptance of a case to the mailing of a decision was 53 days, compared to 58 days in 1986.

As discussed in the previous section, 358 cases (46 percent) were withdrawn after acceptance. An additional 42 cases were withdrawn prior to acceptance. Eleven cases (4 percent) decided in favor of consumers were appealed.

In addition to the case actions mentioned above, at the end of December 1987, 165 cases were open. Forty one were accepted cases that had hearings scheduled in 1988 and 124 cases were incomplete.

V. OPERATION OF THE ARBITRATION PROGRAM

A. ARBITRATION CONTRACT

The statute requires that the EOCABR contract with a professional arbitration firm to conduct arbitration hearings. In 1986 and again in 1987, the office solicited bids for the contract and, in both years, chose the American Arbitration Association (AAA), a professional, nonprofit arbitration organization. The AAA's main functions are to schedule arbitration hearings and to provide a pool of arbitrators to hear Lemon Law cases. All of the arbitrators are trained by AAA in arbitration and then trained jointly by the AAA and EOCABR in the elements of the Lemon Law.

In 1987, ten training sessions for arbitrators were held around the state. Five in Boston, and one each in Springfield, Hyannis, Lowell, Chicopee and New Bedford. Approximately, 325 arbitrators have been trained in the last two years. Two hundred of these trained arbitrators have served on Lemon Law arbitration cases.

B. CONSUMER EDUCATION

The EOCABR has developed many public education materials for the arbitration program. These include the Request for Arbitration Form, a pamphlet on the Lemon Law, a kit to aid consumers in preparing for a hearing, and training materials for arbitrators.

The LLAP distributed 13,500 pamphlets and 2,500 Request for Arbitration Forms in 1987 through the EOCABR's Consumer Information Office and other consumer agencies. The LLAP staff handled approximately 10,000 telephone inquiries from consumers, manufacturers and arbitrators.

VI. OTHER ACTIVITY

In addition to the day-to-day administration of the caseload, the LLAP also issued two advisory opinions to address general questions about the arbitration process, surveyed the consumers who were accepted for arbitration in 1986, and solicited suggestions for changes to the Lemon Law regulations.

A. ADVISORY OPINIONS

Advisory opinions are issued in answer to general questions and are not intended to address issues raised by the facts in a particular case. One 1987 advisory opinion clarifies the manufacturers' responsibility with respect to overallowances given to consumers by dealers. An overallowance is an amount given for a trade-in vehicle that exceeds the actual cash value of the vehicle. (See Appendix E.)

The second advisory opinion describes how the Lemon Law's one year/15,000 mile term of protection and 18 month deadline for requesting arbitration apply to demonstrator vehicles. A demonstrator is a new vehicle that is sold with more than incidental mileage on its odometer. When a consumer buys a demonstrator, the term of protection runs for the remainder of one year or 15,000 miles (whichever comes first) from when the vehicle was first put into use by the dealer. The same consumer would have 18 months from the date he took delivery of the vehicle to apply for arbitration. (See Appendix F.

B. CONSUMER SURVEY

In early 1987, our office surveyed 476 consumers who were accepted for arbitration in 1986. Our purpose was to obtain feedback on the program to aid us in our evaluation of the arbitration program. Sixty-seven percent of the consumers surveyed responded.

Of the 321 consumers who responded: 34 percent had withdrawn from arbitration, 53 percent had cases decided in their favor, and 13 percent had cases decided in favor of the manufacturer.

Consumers were asked to rate various aspects of the program including the application form, assistance from the Lemon Law office, assistance from the American Arbitration Association (AAA), the arbitrator and the program in general. The majority of consumers gave favorable ratings to each aspect of the program with more than 50 percent of consumers giving "excellent" ratings to assistance from the Lemon Law office, assistance from the AAA, the arbitrator and the overall program.

C. REVISING REGULATIONS

The LLAP staff worked throughout 1987 to prepare revised regulations. Consumers were surveyed to gather information to be used in the evaluation of regulatory provisions. EOCABR staff members also met with arbitrators to discuss the ideas about the arbitration process, and specifically, the regulations. In addition, manufacturers were invited to offer suggestions about the regulations. Several manufacturers responded to the request in writing, and as a result of these written comments, the EOCABR met in the fall with some manufacturers.

The suggestions most commonly raised by consumers, manufacturers and arbitrators are: streamlining the arbitration process by reducing paperwork and by building more flexibility into the scheduling of hearings; clarifying a manufacturer's right to view a vehicle prior to a hearing; and developing guidelines for handling issues of vehicle damage that is not related to any vehicle defect.

A public hearing will be held in 1988 to solicit final comments before revised regulations are promulgated.

VII. CONCLUSION

During 20 months of operation, the new car Lemon Law arbitration caseload increased steadily and has now leveled off. We anticipate the number of arbitration requests filed per year to be between 1,000 and 1,200. We expect to distribute close to 14,000 pamphlets in 1988 and to receive up to 11,000 telephone inquiries.

The program provides a fair, inexpensive, quick and successful alternative to court action for consumers. Manufacturers now settle with consumers in nearly half of the cases accepted for arbitration. The percentage of cases decided in favor of consumers has continued at the 1986 rate in 1987, at two-thirds of decisions rendered. Only a small percentage of decisions in favor of consumers are appealed.

To insure continued success of the program and compliance with the statute, we will continue to analyze program trends to aid in our evaluation of its effectiveness. In addition to revising the regulations, we are also updating many of our public education materials so that consumers and manufacturers can better understand their rights and responsibilities. This includes the translation of the Lemon Law pamphlet into Spanish, the revision of the consumer's arbitration kit after revised regulations are promulgated, and the revision of arbitrator training materials.

APPENDIX A

LEMON LAW ARBITRATION PROGRAM CASES RECEIVED (1987)

	CASES RECEIVED
GM TOTAL	527
Ford	162
Chrysler	120
Amc Jeep Renault	54
Toyota	24
Nissan	19
Hyundai	19
Yugo	16
Subaru	16
Volkswagen	12
Alfa Romeo	9
Volvo	8
Saab	8
Mazda	7
Audi	6
Honda	6
Isuzu	5
Mitsubishi	4
BMW	4
Peugeot	3
Jaguar	3
Mercedes Benz	3
TVR	1
Avanti	1
Winnebago	1
Porsche	1
Suzuki	1
Maserati	1
Range Rover	1
Harley Davidson	1
Rolls Royce	0
Ferrari	0
Bertone	0
Sterling	0
Bentley	0
TOTAL	1043

APPENDIX B

SUMMARY OF THE STATUTE

The Lemon Law provides protection for consumers who purchase new vehicles.

A. STANDARD FOR REFUND/REPLACEMENT

First, the law sets a standard for determining when manufacturers must buy back a consumer's vehicle and issue a full refund or replacement vehicle. The vehicle must be substantially impaired in use, market value or safety. The manufacturer or its agent is provided a reasonable number of attempts to fix the vehicle. The law defines a "reasonable number of attempts" as either three or more repairs for the same substantial defect or at least 15 business days out of service for repair of any substantial defects within the law's term of protection (the first year or 15,000 miles of use, whichever comes first). The law also gives the manufacturer one additional opportunity of no more than seven business days to repair the defect(s). The additional opportunity begins when the manufacturer first knows or should have known that the reasonable number of attempts limits have been met or exceeded.

If a defect continues to exist after the final repair opportunity, the consumer is entitled to a refund or replacement vehicle. If the manufacturer does not voluntarily refund the consumer's money or offer a replacement vehicle, the consumer can file for state-run arbitration.

B. STATE-RUN ARBITRATION

Consumers have 18 months from when they take delivery of a vehicle to file a request for state-run arbitration with the LLAP. Neither the consumer nor the manufacturer pays a filing fee. Once a consumer's case is accepted, a hearing is scheduled and a decision issued usually within 45 days of the acceptance. The arbitrator issues an "all or nothing" decision. If he determines that the law's standards have been met, he orders the manufacturer to give the consumer a delivery date for a replacement vehicle, issue a refund, or file an appeal in Superior Court within 21 days of the mailing of the arbitrator's decision. If the arbitrator finds that the vehicle has not met the law's standards, no award will be issued. Consumers who are unhappy with their arbitration decision can sue the manufacturer in court under M.G.L. chapter 93A.

The law has several provisions dealing with manufacturer appeals. It requires manufacturers to post a bond for the amount of the arbitrator's award plus $2500 for anticipated attorneys' fees for the consumer, at the time an appeal is filed. Should a judge find in favor of the consumer and further find that the manufacturer's appeal was frivolous, double damages are awarded to the consumer.

In addition to these appeals provisions, the law also addresses manufacturer noncompliance with the 21-day award/appeal deadline. When no award is issued and no appeal filed, the Secretary of Consumer Affairs can fine manufacturers $5,000 per day for every day an award is late, up to a maximum of $50,000. Consumers who do not receive an award can sue the manufacturer for double damages.

Since June 17, 1986, every new vehicle sold in Massachusetts must display a sticker outlining consumer's rights under the Lemon Law. Dealers must also provide consumers with a separate notice of their rights with their ownership materials.

APPENDIX C

LEMON LAW ARBITRATION CASE DISPOSITION*
1987

	CASES --WITHDRAWN-		CASES -----HEARD----		CASE DECISIONS -----CONS------		------MFR-----	
	#	%	#	%	#	%	#	%
Misc. Other								
TVR	0	0%	1	100%	1	100%	0	0%
Avanti	0	0%	0	0%	0	0%	0	0%
Winnebago	0	0%	1	100%	1	100%	0	0%
Yugo	7	47%	8	53%	7	88%	1	13%
Alfa Romeo	2	25%	3	38%	2	67%	1	33%
Amc Jeep Renault	15	37%	25	61%	16	64%	9	36%
Peugeot	1	50%	1	50%	1	100%	0	0%
Jaguar	1	33%	2	67%	1	50%	1	50%
GM TOTAL	162	41%	219	55%	138	63%	81	37%
Porsche	0	0%	1	100%	1	100%	0	0%
Mitsubishi	0	0%	3	100%	2	67%	1	33%
Subaru	4	27%	9	60%	6	67%	3	33%
Chrysler	67	74%	21	23%	12	57%	9	43%
Ford	67	58%	43	37%	29	67%	14	33%
Volkswagen	3	30%	6	60%	6	100%	0	0%
Audi	0	0%	2	100%	1	50%	1	50%
BMW	1	50%	0	0%	0	0%	0	0%
Nissan	1	6%	14	88%	6	43%	8	57%
Volvo	3	50%	2	33%	2	100%	0	0%
Hyundai	12	86%	2	14%	2	100%	0	0%
Isuzu	1	25%	3	75%	1	33%	2	67%
Toyota	4	25%	12	75%	4	33%	8	67%
Mazda	2	40%	1	20%	0	0%	1	100%
Honda	1	25%	5	125%	4	80%	1	20%
Mercedes Benz	0	0%	0	0%	0	0%	0	0%
Saab	2	40%	3	60%	3	100%	0	0%
Suzuki	0	0%	0	0%	0	0%	0	0%
Rolls Royce	0	0%	0	0%	0	0%	0	0%
Maserati	1	100%	0	0%	0	0%	0	0%
Ferrari	0	0%	0	0%	0	0%	0	0%
Bertone	0	0%	0	0%	0	0%	0	0%
Sterling	0	0%	0	0%	0	0%	0	0%
Range Rover	0	0%	0	0%	0	0%	0	0%
Bentley	0	0%	0	0%	0	0%	0	0%
Harley Davidson	1	0%	0	0%	0	0%	0	0%
TOTAL	358	46%	387	49%	246	64%	141	36%

* IN ADDITION TO CASES WITHDRAWN, OTHER CASES ARE AWAITING HEARINGS, INCOMPLETE (AWAITING FURTHER DOCUMENTATION) OR DENIED (INELIGIBLE FOR ARBITRATION).

APPENDIX D

LEMON LAW ARBITRATION CASELOAD VS. MARKET SHARE (1987)
(NEW CARS AND TRUCKS)

	LEMON INDEX	CASES ACCEPTED #	CASES ACCEPTED %	MARKET SHARE #	MARKET SHARE %
Misc. Other				11	0.00%
TVR		1	0.13%	0	0.00%
Avanti		0	0.00%	0	0.00%
Maserati		1	0.13%	15	0.00%
Yugo	1825%	15	1.92%	448	0.10%
Winnebago		1	0.13%	38	0.01%
Alfa Romeo	1315%	8	1.02%	325	0.07%
Jaguar	156%	3	0.38%	673	0.15%
AMC Jeep Renault	109%	41	5.24%	11,298	2.51%
Peugeot	101%	2	0.26%	572	0.13%
GM TOTAL	60%	399	50.96%	143,130	31.79%
Chrysler	-2%	91	11.62%	53,212	11.82%
Subaru	-21%	15	1.92%	10,937	2.43%
Porsche	-23%	1	0.13%	746	0.17%
Ford	-28%	116	14.81%	92,023	20.44%
Saab	-32%	5	0.64%	4,215	0.94%
Volvo	-32%	6	0.77%	5,098	1.13%
Mitsubishi	-44%	3	0.38%	3,085	0.69%
Volkswagen	-45%	10	1.28%	10,534	2.34%
Hyundai	-45%	14	1.79%	14,765	3.28%
Audi	-49%	2	0.26%	2,244	0.50%
Isuzu	-54%	4	0.51%	4,966	1.10%
Nissan	-56%	16	2.04%	20,897	4.64%
BMW	-59%	2	0.26%	2,776	0.62%
Mazda	-70%	5	0.64%	9,632	2.14%
Toyota	-72%	16	2.04%	33,011	7.33%
Suzuki	-76%	1	0.13%	2,443	0.54%
Mercedes Benz	-78%	1	0.13%	2,637	0.59%
Honda	-89%	4	0.51%	20,117	4.47%
Sterling	-100%	0	0.00%	251	0.06%
Range Rover	-100%	0	0.00%	100	0.02%
Rolls Royce		0	0.00%	23	0.01%
Ferrari		0	0.00%	17	0.00%
Bertone		0	0.00%	9	0.00%
Bentley		0	0.00%	2	0.00%
TOTAL		783	100.00%	450,250	100.00%

NOTE: LEMON INDEX IS THE PERCENTAGE OF CASES ACCEPTED DIVIDED BY THE PERCENTAGE OF MARKET SHARE. THE RESULTING PERCENTAGE INDICATES VARIANCE OF CASELOAD FROM MARKET SHARE.

MARKET SHARE IS BASED ON MASSACHUSETTS REGISTRATIONS OF NEW CARS AND TRUCKS UNDER 10,000 LBS. FROM 1-1-87 TO 12-31-87, ACCORDING TO R.L. POLK & COMPANY.

LEMON INDEX CALCULATED ONLY FOR MANUFACTURERS WITH AT LEAST 100 REGISTRATIONS.

CASES ACCEPTED INCLUDE 24 CASES RECEIVED IN 1986. THREE MOTORCYCLE CASES WERE RECEIVED IN 1987 BUT ARE NOT INCLUDED IN THESE STATISTICS.

LEMON LAW ARBITRATION CASELOAD VS. MARKET SHARE (1987)
(NEW CARS AND TRUCKS)

	LEMON INDEX	CASES ACCEPTED #	CASES ACCEPTED %	MARKET SHARE #	MARKET SHARE %
GM Pontiac	123%	71	9.07%	18,336	4.07%
GM Buick	105%	55	7.02%	15,454	3.43%
GM Oldsmobile	110%	72	9.20%	19,686	4.37%
GM Chevrolet	35%	175	22.35%	74,359	16.52%
GM Cadillac	-21%	8	1.02%	5,857	1.30%
GM Truck & Coach	10%	18	2.30%	9,438	2.10%
GM TOTAL	60%	399	50.96%	143,130	31.79%

Commonwealth of Massachusetts
Executive Office of Consumer Affairs
and Business Regulation
Lemon Law Arbitration Program
One Ashburton Place, Boston, MA 02108

617/727-4061

MICHAEL S. DUKAKIS
GOVERNOR

PAULA W. GOLD
SECRETARY

ADVISORY OPINION #8

NOTE: Advisory opinions are interpretations by the Executive Office of Consumer Affairs and Business Regulation pursuant to M.G.L. c.90 §7N1/2 and 201 CMR 11.00. These opinions are issued in answer to general questions that may arise in the implementation of the Lemon Law Arbitration Program. Advisory opinions are issued without reference to the facts of any specific case.

The following issue has arisen in the interpretation of the New Car Lemon Law and/or its regulations:

Is the manufacturer responsible for refunding any over-allowance that the dealer may have allowed the consumer?

It is the opinion of the Executive Office of Consumer Affairs and Business Regulation that:

For a variety of reasons, different dealers structure deals in different ways. Some dealers may reduce the list price of a vehicle substantially, but only allow the consumer the published book value for his trade-in. Other dealers sell the car close to sticker price, but offer a trade-in allowance greater than book value. This extra trade-in allowance is called an overallowance.

Manufacturers argue that overallowances cause the consumer who wins an arbitration case to be awarded more money than is fair, because the contract price of the vehicle has to be made artificially high to compensate for the overallowance.

While we agree that such dealer practices can, in some cases, result in a larger refund, we can only fashion a partial remedy. We feel, however, that arbitrators should not be put in a position to re-form an executed purchase contract into one that a reasonable consumer or a reasonable dealer would have executed. The statute provides for refunds of the actual contract price, not the price that the vehicle <u>should</u> have sold for.

The agencies within the Secretariat:

DIVISION OF BANKS
DIVISION OF STANDARDS
DIVISION OF INSURANCE
DIVISION OF REGISTRATION
ALCOHOLIC BEVERAGES CONTROL COMMISSION
COMMUNITY ANTENNA TELEVISION COMMISSION
STATE RACING COMMISSION
DEPARTMENT OF PUBLIC UTILITIES

Therefore, only when the consumer's copy of the motor vehicle purchase contract or bill of sale explicitly states a specific amount has been allowed as a discount from list price, or as an overallowance on a trade-in, will the total contract price be reduced. Manufacturers must raise this issue at the hearing for it to be considered by the arbitrator.

Manufacturers should also take steps to correct this problem at its source, through their authorized dealers.

The above opinion should not be construed to govern other questions concerning this issue or related issues.

March 12, 1987
Date

Edgar Dworsky
Director of Consumer Education

Commonwealth of Massachusetts
Executive Office of Consumer Affairs
and Business Regulation
One Ashburton Place
Boston, Massachusetts 02108

617 / 727-7755

MICHAEL S. DUKAKIS
GOVERNOR

PAULA W. GOLD
SECRETARY

ADVISORY OPINION #9

NOTE: Advisory opinions are interpretations by the Executive Office of Consumer Affairs and Business Regulation pursuant to M.G.L. c.90 §7N1/2 and 201 CMR 11.00. These opinions are issued in answer to general questions that may arise in the implementation of the Lemon Law Arbitration Program. Advisory opinions are issued without reference to the facts of any specific case.

The following issue has arisen in the interpretation of the New Car Lemon Law and/or its regulations:

How are the time limits for the term of protection and for requesting arbitration applied in the case of a demonstrator/ executive car?

It is the opinion of the Executive Office of Consumer Affairs and Business Regulation that:

A demonstrator is a vehicle used on more than an incidental basis for test drives by prospective purchasers. An executive vehicle is one which is used by an employee or agent of a dealer or manufacturer on more than an incidental basis, and for purposes other than transport between manufacturer and dealer or dealer and dealer.

The statute defines term of protection as "one year or 15,000 miles of use from the date of original delivery of a new motor vehicle." Since the phrase "to the consumer" is missing from the statute, we construe that, in the case of a demonstrator/executive car, the term of protection begins when the dealer or manufacturer puts the vehicle into regular use as a demonstrator/executive car. Normally, the term of protection begins upon delivery to the first consumer purchaser.

The agencies within the Secretariat:
DIVISION OF BANKS
DIVISION OF STANDARDS
DIVISION OF INSURANCE
DIVISION OF REGISTRATION
ALCOHOLIC BEVERAGES CONTROL COMMISSION
COMMUNITY ANTENNA TELEVISION COMMISSION
BOARD OF REGISTRATION IN MEDICINE
STATE RACING COMMISSION
DEPARTMENT OF PUBLIC UTILITIES

If the parties cannot establish the date the dealer or manufacturer began using the vehicle as a demonstrator, then the term of protection shall end at 15,000 miles, or one year from the date of delivery to the first consumer purchaser, whichever occurs first.

With respect to requesting arbitration, the consumer must do so "within 18 months from the date of original delivery to such consumer of a new motor vehicle." Since the statute specifically defines "consumer" as not including a dealer, a consumer who purchases a demonstrator directly from a dealer has 18 months from the date of taking possession of the vehicle to request arbitration. However, the term of protection during which the vehicle is subject to the protections of M.G.L. c.90, §7N $^{1}/_{2}$ is still limited as noted above.

The above opinion should not be construed to govern other questions concerning this issue or related issues.

1-16-1987
Date

Edgar Dworsky
Director of Consumer Education

ACME
BOOKBINDING CO., INC.

JAN 5 1960

100 CAMBRIDGE STREET
CHARLESTOWN, MASS.